

A guide for handling fraud involving funds from the Department of Health and Family Services

Fraud happens. Fortunately, it doesn't happen often.¹ Because fraud is relatively rare, most of us don't have much experience with it. As a result, when faced with a fraud situation, we find ourselves scrambling to figure out how to manage the aftermath. This guide outlines steps to consider when fraud is suspected involving funding from the Department of Health and Family Services.

Definition of fraud

The Provider Agency Audit Guide (PAAG, on line at www.dhfs.state.wi.us/grants) includes a discussion of fraud and the respective responsibilities of management and the independent auditor. According to the PAAG,

Fraud is getting something of value under false pretences. Examples of fraud involving financial assistance include:

- A caseworker enrolling his or her family members in government programs so they receive benefits for which they were not eligible.
- An agency reporting false financial or performance information to improve the likelihood that the funding agency will renew the contract.
- An agency knowingly reporting unallowable expenses for reimbursement from grants.

In each of these examples, someone was injured: an eligible person who didn't receive services because slots were filled with ineligible people, an agency that didn't get a contract it was qualified for because the contract went to an agency that cheated, and the funding agency that paid more for services than it should have.

Fraud involving government funding also violates the public trust. So, in addition to each individually identifiable victim, another victim is the public as a whole.

The risk of fraud is much higher when two key factors are present: pressure or incentive to commit fraud and the perceived opportunity to do so. The incentive could be personal (money for oneself or for one's family) or organizational (the agency needing to lay off staff if it loses its government contract). The opportunity could be weakness in internal controls or the belief that the internal controls can be circumvented.

Fraud prevention

All agencies should be aware of the potential for fraud within their organizations and take steps to prevent fraud from happening. Personal incentives to commit fraud are almost impossible to prevent. However, agencies can take steps to avoid organizational incentive for fraud and to maintain strong internal controls through fraud awareness and prevention activities such as:

- promoting integrity and ethical behavior throughout the organization,

¹ At least that's what we thought when we first wrote this. We are finding out that fraud is fairly common.

- performing background checks of employees, checking their license or certification status, and checking for their debarment or suspension status,²
- documenting and reviewing business processes for handling funds,
- identifying and correcting situations where there is a lack of segregation of duties or where staff override these controls,
- training staff on reporting responsibilities and procedures,
- promptly and thoroughly investigating whistle-blower complaints and creating a safe environment for such reports, and
- ensuring that the agency has adequate insurance coverage for employee theft.

A note on terminology

In this guide, the “provider” is an agency that has received government funding from a “funding agency.” For the sake of clarity, we’ve prepared the guide as if a local non-government organization is receiving funds directly from the Department of Health and Family Services. With a bit of mental adjustment, readers can use this guide for other situations, such as non-government organization/county, county/department, and department/federal government.

Managing a fraud investigation

The department considers all fraud involving its programs to be material. The department expects that agencies take corrective action for weaknesses that led to the fraud and to repay the department for all losses due to fraud, regardless of the amount involved.

In some situations, the funding agency’s program administrators already have comprehensive guidance on handling fraud that involved their programs. Two examples are this department’s guidance on beneficiary fraud in the Income Maintenance programs and the Department of Public Instruction’s guidance for mismanagement of funds for the Child and Adult Care Food Program. When dealing with a suspected fraud, you should consult with program experts to find out whether guidance exists for the programs that the provider is administering. This guide fills the gap for situation where there is no program-specific guidance on handling a suspected fraud.

All of the following steps might not be applicable to any particular situation, and the steps are only roughly in the order in which they are likely to occur. The actual steps taken and the order in which they are taken will vary depending on the circumstances of the suspected fraud.

² Much of the funding from the Department of Health and Family Services is from the federal government, which maintains a list of “excluded parties” that are debarred, suspended, proposed for debarment, or declared ineligible by a federal agency from participating in federal assistance programs. Employers can consult the Excluded Parties Listing System (EPLS, online at <http://epls.arnet.gov>) to find out whether prospective employees are on this list.

Steps for the provider agency:

1. When the provider agency becomes aware of a suspected fraud, the provider's board of directors appoints a liaison to coordinate the reaction to the suspected fraud and gives this person authority to take the steps described in this section. The liaison reports to the board and follows its direction. (We're assuming the board was not part of the fraud. We recommend contacting the local district attorney or the funding agency if someone suspects board members being involved in a fraud. In addition, fraud can be reported to the Division of Criminal Investigation in the Wisconsin Department of Justice.)
2. The liaison begins documenting all contacts made and steps taken by the provider in reaction to the suspected fraud.
3. The liaison handles all correspondence, etc. related to the suspected fraud.
4. The liaison consults with the provider's legal counsel.
5. The liaison notifies law enforcement and assists law enforcement in its investigation. (Fraud should always be referred to law enforcement for prosecution. Simply terminating an employee without prosecuting increases the likelihood that the person will commit fraud against the next employer.)
6. Under the advice of legal counsel and/or law enforcement, the liaison stops any further loss by taking action such as placing the person suspected of committing fraud on administrative leave, changing locks, suspending access to computer systems, changing passwords, changing access authorization, re-assigning all case files, and taking away access to areas where records are kept.
7. Unless specifically directed otherwise by legal counsel or law enforcement in writing and at the time of the referral to legal counsel or law enforcement, the liaison notifies the contract administrators at all funding agencies as soon as it becomes aware of the suspected fraud. The liaison should include as much of the information about the suspected fraud as possible and offer to involve the funding agency in planning the response to the suspected fraud.³

³ Reporting fraud to the funding agency is a requirement under the *Provider Agency Audit Guide* and the *State Single Audit Guidelines*. These documents can be accessed through www.dhfs.state.wi.us/grants. Involving the funding agency from the beginning reduces the potential for duplication of effort and ensures that the investigation is planned to provide the information the funding agency will need to meet its own responsibilities for the funding. In addition, the provider needs prior approval from the funding agency for charging the cost of an audit firm's fraud investigation to the funding agency's program – see #10, on the following page.

8. The liaison investigates or arranges for an investigation of the suspected fraud to provide answers to the following questions:⁴
- How did the agency learn of the fraud?
 - Who was involved?
 - What happened?
 - When did it happen?
 - Did the fraud involve government funds? If yes, which programs, what is the dollar amount involved by program, how were these programs billed, and how does the agency propose to make the programs or clients whole again?
Depending on the amount involved and the complexity of the situation, a “what was” and “what should be” presentation may be needed for financial statements, audit schedules, and claims for reimbursement.
 - What was the impact on clients served by the agency?
 - What has the agency done in reaction to the fraud?
9. If the fraud directly affected clients (for example, a case manager is suspected of arranging for inappropriate services for client or mishandling client funds), the liaison ensures that all of the case files that were handled by the suspect are assigned to other staff for review.
10. Depending on the nature of the suspected fraud, the liaison may decide to investigate the fraud internally or to obtain the services of an audit firm to perform a fraud investigation. In all cases, whoever is chosen to perform the fraud investigation must be independent of the organizational unit where the fraud occurred and must report to the board of directors or to agency management at a level above the organizational level where the fraud occurred. The provider should consult with law enforcement, legal counsel, and the funding agencies before deciding how investigate the fraud.
- a. Having someone from within the provider agency investigate the fraud may be appropriate in situations where the fraud is limited and involves a relatively small amount of money (less than \$50,000) or where the provider has a strong internal audit function. However, the provider needs to be aware that there could be an appearance of a conflict of interest.
 - b. Hiring an independent audit firm to perform a fraud investigation is strongly recommended in situations where the fraud is pervasive or it involves a relatively large amount of money (more than \$50,000). We also recommend that the audit firm hired to do the fraud investigation not be the same firm that performed the most recent annual audit. While an auditor who also does the annual audit has an advantage in being familiar with the agency, there is a problem with independence or, at the very least, an appearance of a conflict of interest when a fraud investigation involves reviewing records from the period the firm just audited.

⁴ Most of this information is required to be reported to the funding agency under the *Provider Agency Audit Guide* and the *State Single Audit Guidelines*, which can be accessed through www.dhfs.state.wi.us/grants.

The provider should provide the funding agency with an opportunity to review the engagement letter for the fraud investigation and the provider should incorporate additional items that the funding agency may request. This will reduce the potential that the funding agency will have specific information needs that were not addressed in the investigation, requiring the provider to have to bring the auditor back to do more work.

The engagement letter should specify that:

- The auditor is to perform an agreed-upon procedures engagement in accordance with the attestation standards established by the American Institute of Certified Public Accountants and United States General Accounting Office's *Government Auditing Standards* (the Yellow Book).
- The auditor is to provide a written report answering all of the questions and information listed in #8, above.
- The auditor will provide recommendations on improving internal controls in the report.
- The auditor must document steps performed in the investigation.
- The provider and the funding agency have the right to review the auditor's documentation of the steps followed in the investigation.
- Other items as specified by the funding agency.

The provider pays for the fraud investigation. The cost of the fraud investigation is an allowable cost to the funding agency's program if the following conditions are met:

- The cost meets all the relevant criteria for an allowable cost (see *Allowable Cost Policy Manual* at www.dhfs.state.wi.us/grants).
- The provider obtained prior approval from the funding agency for charging the cost of the fraud investigation to its programs.
- The cost is charged to programs in proportion to their share of total expenditures of the agency, unless the funding agency authorizes charging a higher share to its programs.

11. The liaison provides the report on the fraud investigation to the provider's Board of Directors for review and approval. The Board then authorizes official transmittal of the investigative report to the funding agency's liaison and to law enforcement.
12. The provider's Board of Directors directs the provider's liaison and/or other provider agency managers and staff to develop a corrective action plan to improve the agency's internal controls and address all known weaknesses that contributed to the fraud. The Board reviews and approves the corrective action plan, and then: (a) directs appropriate agency staff to implement the plan; and (b) directs the liaison to report to the funding agency on its corrective action.

13. Upon the direction from the provider's Board, the liaison makes arrangements with the funding agencies for payment of amounts due to them.

Steps for the funding agency:

1. The person at the funding agency who learns about a fraud involving a provider notifies the appropriate people within the organization. For the Department of Health and Family Services, at minimum, these people include the contract administrator, the contract administrator's division administrator, the Director of Area Administration, the Director of the Office of Legal Counsel (OLC), and the Director of the Office of Program Review and Audit (OPRA).
2. The funding agency appoints a liaison. If the provider is known to have funding from only one division, the liaison could be someone from that division. The coordination issues become more complex if the agency has more than one contract with the department, if it has contracts with the department and is regulated by the department, or if it has contracts with both the department and with counties using department funds. In these cases, it may be beneficial for the liaison to be from Area Administration, OLC, or OPRA.
3. The liaison begins documenting all contacts made and steps taken by the funding agency in reaction to the suspected fraud.
4. The liaison handles all correspondence, etc. related to the suspected fraud.
5. The liaison checks whether the provider has contracts with or is regulated by other parts of the department and whether the provider does business with counties. The liaison contacts the respective Division Administrators and the counties that are affected by the fraud. (The provider should have already made notification to the counties as part of notifying its funding agencies. The department liaison's contact with the counties gives them someone at the department to work with and begins laying the groundwork for determining the method for repayment of potential amounts due back to the department from the county for refunds of fraudulent claims from the provider.)
6. If the suspected fraud involves funds that the funding agency received from another agency, such as the federal government, the liaison notifies the other agency and offers to involve the other agency in planning the response to the suspected fraud.
7. The liaison coordinates with other state agencies, counties, and law enforcement.
8. Depending on circumstances, the liaison may invoke the standard contract clause allowing access to agency records and go onsite to do its own work or follow up as

needed to ensure corrective action has been taken. The liaison consults first with law enforcement before performing or arranging for any onsite work.

9. Depending on the circumstances, the liaison may hire an audit firm to perform a fraud investigation. The cost of this audit may be charged to the agency through amending the contract to reduce the contract amount and using the freed-up funds to hire an auditor.
10. Depending on the circumstances, the liaison may assist program and regulatory divisions in developing a contingency plan or in planning additional programmatic or regulatory monitoring in case the fraud results in disruption to services or the agency going out of business.
11. The liaison reviews the agency's plans for investigating the fraud and provides feedback on those plans.
12. The liaison reviews any reports issued as a result of the investigation and follows up as needed to confirm corrective action.
13. The liaison makes the arrangements for the amounts to be returned to the department and forwards any amounts due to its own funding agency.